

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PAUL BLAZEVOICH,

Plaintiff and Appellant,

v.

BOBBI J. PEARSON et al.,

Defendants and Respondents.

D052424

(Super. Ct. No. GIS 26465)

APPEAL from a judgment of the Superior Court of San Diego County, William S. Cannon, Judge. Affirmed.

Defendant and appellant Paul Blazeovich (Paul), representing himself on appeal, contends a \$50,000 note he drafted in 1993 in favor of his aunt and uncle, Carolyn Blazeovich (Carollyn) and Edward Blazeovich (Edward), was usurious because he only received \$48,000 of the \$50,000 they transferred to him, and the \$2,000 difference, when combined with the interest at the "maximum rate allowed by law" provided under the note, exceeded the statutory maximum. Paul thus seeks reversal of the portion of the

judgment denying his usury claim and requests the matter be remanded for a new trial on that issue.

We conclude Paul's usury claim is barred by res judicata, and that, in any event, the note was not usurious. We thus affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

The origin of the issue raised by Paul on appeal can be traced back to 1992, when Paul induced Carolyn and Edward to transfer \$50,000 to him. Litigation ensued after Paul forged their signatures on checks totaling \$48,000 issued them by defendant and respondent Oak Tree Escrows, Inc. (OTE), and pocketed the money. More than a year later, Paul gave Carolyn and Edward a \$50,000 note Paul drafted, secured by a deed of trust on his property as a second priority lien. Carolyn and Edward sued OTE in San Diego County Superior Court, case No. EC 9935 (case No. 1) for the return of the \$50,000 because they believed the note and security interest were "worthless." They alleged in their suit OTE had breached one or more duties owed to them by giving Paul their money. OTE cross-complained against Paul.

Judge Donald L. Meloche presided at the court trial, and in January 1996 he issued a statement of decision and judgment. An appeal by OTE, but not Paul, followed and was resolved against OTE, which paid the judgment in full. (See D025628.)

In October 2006, in response to an action to foreclose on the \$50,000 note (that ostensibly was no longer "worthless") by an assignee of OTE, Paul filed suit in San Diego County Superior Court, case No. GIS 26465 (case No. 2) against OTE and its principal officer, director and shareholder, defendant and respondent Bobbi J. Pearson,

among others. Paul's complaint included for the first time a claim of "usury" based on the effective interest rate that accrued under the \$50,000 note.

A court trial on Paul's complaint commenced in late November 2007 before Judge William S. Cannon. Paul, appearing in propria persona, represented to the court that it could rule on "all" the issues raised in his complaint without taking any trial testimony. The court reviewed Judge Meloche's statement of decision, which it noted was "eye-opening," and after oral argument ruled that Paul's usury claim was "absolutely without merit." The court granted judgment against Paul in case No. 2 and ordered him to pay the costs and attorney fees of OTE and Pearson.

In so doing, Judge Cannon accepted the findings and conclusions of Judge Meloche in case No. 1, which are restated here in part as follows:

"[Plaintiffs] Edward and Carollyn Blazeovich are the uncle and aunt of Paul Blazeovich. The evidence showed that Paul Blazeovich stated to plaintiffs that he wished to acquire the 'Wyatt Street property' but that he lacked sufficient funds. Paul Blazeovich convinced the plaintiffs that if they would advance \$50,000.00, he would ultimately open up a double escrow and upon close of the escrows, they would receive the return of their funds.

"Escrow number 7635-B [Escrow 35] and Escrow number 7636-B [Escrow 36] were opened simultaneously with [OTE]. Escrow 35 was opened for the purchase of residential property from Arthur M. Maetzold by plaintiffs Edward and Carollyn Blazeovich . . . . Escrow 36 . . . was opened for the sale of plaintiffs Edward and Carollyn Blazeovich's property from Escrow 35 to Paul Blazeovich.

"There were peculiar aspects and features of the escrow agreements in that Escrow 35 required no cash down payment and Escrow 36 provided that sellers, Carollyn and Edward Blazeovich, were to receive funds as provided in the agreement. The funds were to be released to the seller[s] '[u]pon receipt of "good funds" deposited into escrow . . . without any further written instructions.' This meant that without the closing of Escrow 35 or 36, the money was to be immediately withdrawn and paid out after its deposit.

"Written escrow instructions were prepared by [OTE] and given to Paul Blazeovich who, outside the presence of [OTE] had plaintiffs sign Escrow 35 and 36. Paul Blazeovich promised plaintiffs a quick return of their funds. Paul Blazeovich took the plaintiffs to their bank and assisted them in withdrawing \$40,000.00 and placing it in a cashier's check. Upon learning that plaintiffs had refinanced their house and had \$50,000.00 available, he then convinced them to give him an additional \$10,000.00.

"Paul Blazeovich then surrendered signed Escrows 35 and 36 along with the \$40,000.00 and \$10,000.00 amounts. [OTE] received no further written documents from plaintiffs other than Escrow 35 and Escrow 36. Further, [OTE] never met with, conversed or corresponded with the plaintiffs prior to releasing the funds from Escrow 36 in the amount of \$48,000.00.

"On or about March 10, 1992, Paul Blazeovich opened two additional escrows: Escrow No. 7637-B [Escrow 37] and Escrow No. 7638-B [Escrow 38] in which he forged escrow instructions for a proposed sale of the Nidrah Street and Mast Boulevard properties from Paul Blazeovich to Edward and Carollyn Blazeovich.

"On March 10, 1992, the same date that Escrow 37 . . . and Escrow 38 . . . were opened, Paul Blazeovich received from [OTE] a check in the amount of \$38,000.00 made payable to Edward and Carollyn Blazeovich. Paul Blazeovich forged the names of Edward and Carollyn Blazeovich and deposited the funds in his own bank account. After receiving the \$38,000.00 and \$10,000.00 amounts payable to the plaintiffs from the escrow account, Paul Blazeovich deposited said sums in his own account and continued with his scheme to obtain financing for the properties by recirculating the money through Escrows 37 and 38.[¶] . . . [¶]

"Commencing in the latter part of 1992, Paul Blazeovich forged the plaintiffs' signatures to documents canceling the escrows."

After finding OTE liable to Edward and Carollyn for placing funds directly in the hands of Paul, who was then able to forge the signatures of his aunt and uncle and use the funds for his own purpose, the court in case No. 1 awarded OTE "full indemnification rights" against Paul "for his fraudulent and improper acts which caused plaintiffs Edward and Carollyn Blazeovich to obtain judgment against [OTE]," which "has properly and necessarily incurred attorney's fees and costs in attempting to defend themselves in the present action."

"In evaluating the case, the trier of facts (in this case, the court) has the full opportunity to evaluate the credibility of the various witnesses. The court finds that Paul Blazeovich has little or no credibility and that he was severely impeached on important and material issues. For example, Paul Blazeovich testified that he received only \$40,000.00 from the plaintiffs, but he was impeached by the following: (1) his own bank

records which established \$50,000.00-plus was deposited within the time frame involved in this case; (2) at his deposition he consistently testified several times that he had received \$50,000.00 from the plaintiffs; (3) in an attempt to settle plaintiff[s'] claim against him, defendant Paul Blazeovich presented them with a \$50,000.00 note to pay off an alleged '\$40,000.00 amount.'

"Further, Paul Blazeovich admitted when submitting documents with the plaintiffs' signatures that he attempted to make their signatures, which were forged, look just like the plaintiffs' signatures."

Based on these findings, the court entered judgment in favor of Carollyn and Edward against OTE in the total amount of \$49,700 and awarded them costs against OTE. The court further entered judgment in favor of OTE against Paul for indemnity for: (1) \$49,700 (the amount of the judgment against OTE); (2) costs in the amount awarded to Carollyn and Edward (as part of their judgment against OTE); and (3) OTE's own reasonable attorney fees and costs.

As noted, OTE, but not Paul, appealed the \$49,700 judgment in case No. 1. This court affirmed the judgment and awarded Carollyn and Edward their costs on appeal. (See D025628.) OTE subsequently paid the judgment in full, including the principal amount of \$49,700, the costs awarded to Carollyn and Edward and accrued interest.

The \$50,000 note was assigned to OTE in accordance with the judgment in case No. 1. OTE in turn assigned the note to respondent Bobbi J. Pearson 1990 Trust, a revocable trust established by Pearson (Pearson trust). A trustee's sale under the deed of trust securing the \$50,000 note was commenced and ultimately concluded in November

2006. The beneficiary's authorization to bid in connection with the trustee's sale showed the beneficiary was owed approximately \$126,000, comprised of principal owed on the note of \$50,000, interest of \$73,339.20 accruing at the rate of 10 percent per annum from the date of the note, March 9, 1992, to the actual sale date of the security interest, November 9, 2006; and various other costs and expenses related to the trustee's sale.

During the pendency of the trustee sale proceedings, Paul commenced case No. 2 attacking the legality of the \$50,000 note and deed of trust securing the note. As noted, Judge Cannon rejected these claims and granted judgment against Paul, finding the \$50,000 promissory note Paul prepared was "valid and in force and effect" and not usurious. The court ordered that Paul receive nothing on his complaint, awarded costs and attorney fees to respondents and included in the judgment discovery sanctions of \$2,780 against Paul it previously had awarded OTE.

The sole issue on appeal is whether Paul paid a usurious rate of interest on the note.

## DISCUSSION

### I

#### *Standard of Review*

"[T]he question of whether a transaction is usurious is generally a mixed question of fact and law." (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 800 (*Ghirardo*).) " 'In all [usury] cases the issue is whether or not the bargain of the parties, assessed in light of all the circumstances and with a view to substance rather than form, has as its true object the hire of money at an excessive rate of interest. [Citation.] The existence of the requisite

intent is always a question of fact.' " (*Id.* at pp. 799-800, quoting *Boerner v. Colwell Co.* (1978) 21 Cal.3d 37, 44.)

"The question of usury, however, also can require more than a factual determination of who did what and why they did it. Once the historical facts of the transaction are determined, the question of whether *that type of transaction* is subject to the usury proscription is a question of law." (*Ghirardo, supra*, 8 Cal.4th at p. 800.)

## II

### *Res Judicata*

#### A. *Governing Law*

"[I]n California 'res judicata is said to have two aspects, its primary aspect of bar and merger and the secondary aspect of collateral estoppel.' [Citation.]" (*Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 401 (*Aerojet-General Corp.*)). "Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, 'precludes relitigation of issues argued and decided in prior proceedings.' [Citation.] Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-897, fn. omitted.)

"Under the merger-and-bar aspect of res judicata, a matter is deemed to be conclusively decided by a prior judgment 'if it is actually raised by proper pleadings and

treated as an issue in the cause . . . . But the rule goes further. If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable.' " (*Aerojet-General Corp.*, *supra*, 97 Cal.App.4th at p. 402, quoting *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202.)

*B. Paul's Usury Claim in Case No. 2 Is Barred by Res Judicata*

We conclude the usury issue raised by Paul in this appeal was "within the scope of the action, related to the subject-matter and relevant to the issues" in case No. 1, and thus is barred by the *res judicata* doctrine. (*Aerojet-General Corp.*, *supra*, 97 Cal.App.4th at p. 402.) Judge Meloche in case No. 1 found that Paul induced Carollyn and Edward to transfer \$50,000 to him; that in March 1992 Paul received from OTE checks totaling \$48,000 made payable to Carollyn and Edward; that he forged their signatures and deposited that money in his own bank account; that when Carollyn and Edward grew concerned and asked to be repaid, Paul gave them the \$50,000 note secured by real property with a prior lien; and that Carollyn and Edward determined the note to be "worthless."

As Paul recognizes, these findings from case No. 1 are binding on this court under the collateral estoppel doctrine. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*).) They show Paul's usury claim was fully "teed up" in case No. 1 (to the extent

it was an issue at all). Paul should have raised the usury issue then, rather than waiting until 2006 when he filed an action to stop the trustee's sale (when apparently the note was no longer "worthless"). We conclude the res judicata doctrine bars Paul from litigating his usury claim in case No. 2.

### III

#### *Usury*

##### *A. Governing Law*

Even without res judicata, we conclude the \$50,000 note is not usurious. The California Constitution, article XV, section 1, states: "No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than the interest authorized by this section upon any loan or forbearance of any money, goods or things in action."<sup>1</sup> "The essential elements of usury are: (1) The transaction must be a loan or forbearance; (2) the interest to be paid must exceed the statutory maximum; (3) the loan and interest must be absolutely repayable by the borrower; and (4) the lender must have a willful intent to enter into a usurious transaction." (*Ghirardo, supra*, 8 Cal.4th at p. 798.)

---

<sup>1</sup> "California's usury proscription is also set forth in a statute, an initiative measure that has not been codified. (Stats. 1919, p. lxxxiii, Deering's Uncod. Initiative Measures & Stats. 1919-1 (1973 ed.) p. 35.) This statute remains in full force to the extent it does not conflict with the Constitution. (*Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 170-178.) Although the statute states that it may be referred to as the 'usury law' (Stats. 1919, p. lxxxiii, Deering's Uncod. Initiative Measures & Stats., 1919-1, *supra*, § 5, p. 117), we use the term in its more general sense to refer to both the constitutional and statutory usury provisions." (*Ghirardo, supra*, 8 Cal.4th at p. 798, fn. 2.)

"A transaction is rebuttably presumed *not* to be usurious." (*Ghirardo, supra*, 8 Cal.4th at pp. 798-799.) "The borrower bears the burden of proving the essential elements of a usurious transaction." (*Ibid.*; see also *Sandell, Inc. v. Bailey* (1963) 212 Cal.App.2d 920, 931-932.)

"The California courts have held the Usury Law was designed to penalize lenders taking advantage of unwary . . . borrowers." (*Buck v. Dahlgren* (1972) 23 Cal.App.3d 779, 787 (*Buck*).) Lord Mansfield described the purpose of the usury laws in the eighteenth century case of *Browning v. Morris* (1778) 2 Cowp. 790, 791 thusly: " '[The usury statutes] were made to protect the needy and necessitous persons from the oppression of usurious and monied men who are eager to take advantage of the distress of others, whilst they on the other hand, from the pressure of their distress, are ready to come into any terms and, with their eyes open, not only break the law, but complete their ruin.' " (*Buck, supra*, 23 Cal.App.3d at p. 787, fn. 8.)

#### B. *The \$50,000 Note Was Not Usurious*

Based on the findings made in case No. 1, which are binding on this court (see *Lucido, supra*, 51 Cal.3d at p. 341), we conclude Paul cannot rebut the presumption to show the \$50,000 note he drafted was not usurious. Those findings show that the effective rate of interest paid on the note did not exceed the statutory maximum, and that Carollyn and Edward lacked the requisite intent to enter into a usurious transaction. (See *Ghirardo, supra*, 8 Cal.4th at p. 798.) The \$2,000 difference between what Carollyn and

Edward "loaned"<sup>2</sup> Paul and what Paul "received" (or stole) from escrow (after he forged their signatures) is not "interest" for the loan, as Paul argues.

The situation here is substantially different from the facts in *Devers v. Greenwood* (1956) 139 Cal.App.2d 345 (*Devers*), a case on which Paul relies. In *Devers*, defendants secured a \$2,000 loan for plaintiff, who executed a note in blank that was completed by defendants. Rather than make the note for \$2,000, the defendants in *Devers* made the note for \$2,200 with interest at 10 percent per annum. The court concluded that when a "bonus" is paid for making a loan, it must be considered interest, and if the bonus plus interest on the note exceeds the statutory maximum, the loan is usurious. (*Id.* at pp. 350-351.)

Unlike the plaintiff in *Devers*, here Paul did not pay a "bonus" to Carollyn and Edward to obtain a loan. Carollyn and Edward also did not resort to any subterfuge (as did the defendants in *Devers*) to extract a usurious rate of interest from Paul. And certainly the findings from case No. 1 show Paul was anything but an "unwary borrower" in need of protection. (*Buck, supra*, 23 Cal.App.3d at p. 787.)

---

<sup>2</sup> As an aside, Paul argued in case No. 1 that he, Carollyn and Edward were joint venturers, a claim Judge Meloche noted was not supported by "one stick of evidence in writing." Paul also set up a double escrow with OTE that had Carollyn and Edward purchasing residential property from Arthur Maetzold and selling that property to Paul. To the extent the transfer of \$50,000 from Carollyn and Edward to Paul was determined to be an investment in a joint venture or partnership (*Stickel v. Harris* (1987) 196 Cal.App.3d 575, 585) or a sale of an interest in real property (*Boerner v. Colwell Co.* (1978) 21 Cal.3d 37, 44), the usury laws would not apply. However, in light of our conclusion the note was not usurious, it is unnecessary for us to decide whether the nature of the transaction between Paul and his aunt and uncle was something other than a "loan or forbearance." (See Cal. Const., art. XV, § 1.)

Indeed, it was Paul, *not* Carolyn and Edward, that set up this transaction; it was Paul who fraudulently obtained *their* money from the escrows; and it was Paul who gave Carolyn and Edward a \$50,000 note -- the *same* amount of money they gave him -- after he took their money and forged their signatures to cancel the escrows.

Judge Meloche in case No. 1 concluded Paul was "fully culpable," "caused the entire situation" and "caused a legitimate business [OTE] a substantial amount of damage through his intentional acts and scheming." In fact, Judge Meloche noted if OTE had asserted a fraud claim against Paul, the court would have been inclined to grant OTE punitive damages against Paul based on his "forgery and perjury." We conclude based on these findings in case No. 1 that Paul cannot satisfy his burden to show the \$50,000 note he drafted was usurious.<sup>3</sup>

#### DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

---

BENKE, Acting P. J.

WE CONCUR:

---

HUFFMAN, J.

---

HALLER, J.

---

<sup>3</sup> Although unnecessary to the resolution of this case, we note the findings in case No. 1 also strongly support application of the doctrines of unclean hands and/or estoppel against Paul. (See e.g., *Lakeview Meadows Ranch v. Bintliff* (1973) 36 Cal.App.3d 418, 424-425 [estoppel]; *Kendall-Jackson Winery Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 [unclean hands].)